UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

THE WASHINGTON BALLET

Employer

and Case 5-RC-15807

AMERICAN GUILD OF MUSICAL
ARTISTS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The issues in this proceeding are: (1) whether the petitioned-for employees are seasonal and/or temporary employees who are ineligible to vote, and if they are eligible whether the election should be postponed due to the seasonal nature of the Employer's business; (2) whether two dancers who also serve as rehearsal assistants are supervisors within the meaning of the Act; and (3) whether the apprentices share a community of interest with the dancers sufficient to warrant their inclusion in the bargaining unit. There is no relevant history of collective bargaining.

The Petitioner ("Union" or "AGMA") seeks to represent all dancers and apprentices employed by The Washington Ballet, excluding all other employees, guards, and supervisors as defined by the Act.[1] The Petitioner contends that: (1) the dancers and apprentices may be organized as a bargaining unit because they have a reasonable expectation of continued employment and because they do not have a 'date certain' for termination; the Union asserts that the election should be held immediately, rather than after April 1, 2005, as the Employer requests as there is no 'seasonal peak' of employment warranting a delay in the election; (2) the two dancers who also serve as rehearsal assistants should be included in the unit because they are not supervisors within the meaning of the Act; and (3) the apprentices should be included in the unit because

[1] The petitioned-for unit originally included stage managers and production stage managers, and did not include apprentices. At hearing, the Petitioner amended the unit to include apprentices and exclude production stage managers. Following the hearing, the Petitioner filed a letter with the Regional Director dated January 7, 2005 again amending the petitioned-for unit to exclude stage managers.

they share a community of interest with the dancers. There are approximately 22 employees – 20 dancers and two apprentices – in the petitioned-for unit.

The Petitioner stated at hearing that it is prepared to proceed to an election in any unit found appropriate by the Regional Director.

The Employer ("TWB") maintains that: (1) the election should be postponed until after April 1, 2005, due to fluctuations in the Employer's workforce;[2] (2) the rehearsal assistants are supervisors within the meaning of the Act and should be excluded from the unit; (3) the apprentices do not share a community of interest with the dancers and therefore should not be included in the bargaining unit.

I have carefully considered the evidence and arguments presented by the parties on these issues. As discussed below, I conclude that the petitioned-for employees should not be forbidden to vote based on their 'seasonal' or 'temporary' employee status. I further conclude that the election should go forward immediately. Additionally, I find that the rehearsal assistants are not supervisors within the meaning of the Act and thus should be included in the unit. Finally, I conclude that the petitioned-for unit is appropriate and the apprentices may properly be included in the unit.

The Employer presented testimony from the following employees of The Washington Ballet: Septime Webre, Artistic Director; Jeffrey Edwards, Associate Artistic Director; Ed Cucurello, production stage manager; Sandy Barrack, stage manager; Erin Mahoney and Jason Hartley, dancers/rehearsal assistants; and Kara Cooper and Brian Malek, apprentices. The Petitioner presented testimony from Eleni Kallas, AGMA representative, and Washington Ballet dancers Nikkia Parish and Brian Corman.

FACTUAL SETTING

The Washington Ballet is both a ballet Company and a ballet school. TWB is run by the Executive Director, Jason Palmquist, and the Artistic Director, Septime Webre. The Executive Director generally manages the Employer's financial, development, marketing, facilities, administrative and production departments, as well as the school. However, these various departments may also report to the Artistic Director when questions relating to image, artistry or aesthetics arise. The Artistic Director oversees the Artistic Department, which consists of the Artistic Staff – the Associate Artistic Director and the Ballet Master – as well as the dancers in the Company. The Petitioner does not seek to represent, and the Employer does not contend the unit must include, any employees located outside of the Artistic Department.

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[2] It is unclear whether the Employer is also arguing that the petitioned-for employees are ineligible to vote due to their status as temporary or seasonal employees. While the record and Employer's brief contain some allusion to these positions, they are never argued explicitly. However, since the issues have been raised, albeit indirectly, they will be addressed in this Decision and Direction of Election.

As Artistic Director, Septime Weber is responsible for hiring, firing, and discipline within the Artistic Department. His other duties include teaching Company classes, running rehearsals, engaging guest choreographers to set particular pieces for the Company to perform, and choreographing ballets himself.

Jeffrey Edwards is the Associate Artistic Director. He acts as a liaison between the Artistic Department and other Departments within TWB, such as the fundraising or marketing departments, and occasionally as a liaison between TWB and other organizations. Both Edwards and Ballet Master John Goding teach Company classes, lead rehearsals, assist in choreography, coach dancers, create daily schedules, and coordinate with the production department in matters such as costume design. They also assist with hiring and determining raises for dancers.

Dancers

The dancers in the ballet Company work 32-40 non-consecutive weeks per year. In addition, occasionally the Company will tour locally, nationally, or internationally outside of the 32-40 week season. The season typically starts in August and ends in May. Dancers sign a standardized yearly employment contract with TWB. The current contract provides, in pertinent part, "the Company will endeavor to notify artists being offered contracts for the 2004-2005 season[3] (the "Season") of reengagement on or before March 1, 2005. Artist will have three weeks from the date of offer, if any, to accept or not accept a contract." The Company does not experience much turnover. Of the 20 dancers in the Company, at least 15 have been with the Company for a minimum of two seasons. Of those 15, nine have been with the Company for five seasons or more.

Dancers are paid a weekly salary. The salary minimum is about $500; the average dancer salary is approximately $750 per week, plus per diem and overtime as necessary. Salaries are determined by the Artistic Director and Staff, and are based on skill and experience. The Company performs about nine or ten weeks per season; otherwise they rehearse. During rehearsal weeks the dancers' hours are from 9:30 a.m. to 6:15 p.m. They sign a daily sign-in sheet when they arrive, and then attend ballet class from 9:30 a.m. – 11:00 a.m. Following a 15 minute break, they rehearse from 11:15 a.m. – 2:15 p.m., taking a five minute break each hour. From 2:15 p.m. to 3:15 p.m. they eat lunch, then rehearse again from 3:15 p.m. – 6:15 p.m. Any dancer can be cast in any role in the Company's productions.

Apprentices

Apprentices also dance with the Company. The number of apprentices at the Company fluctuates; at present there are two. Apprentices may be hired based on auditions, or they may be selected from TWB's school or its training group, the Studio

[3] In his testimony, Webre explained that this is a typographical error – the contract should read "2005-2006 season".

Company. Apprentices may only dance with the Company as an apprentice for a maximum of two seasons -- after that they must either be elevated into the Company as a dancer or leave. The Artistic Director does not hire apprentices unless he feels there is a great likelihood that they will get into the Company within a year or two. Apprentices may be promoted into the Company at any time. They have the same schedule as the dancers, and participate in all of the same classes and rehearsals as members of the Company. Apprentices sign in the same way as dancers, and take the same breaks. They are supervised in the same way as the dancers; apprentices receive no additional mentoring or supervision. They dance in the same performances as the dancers, and are eligible to dance any role in the Company's productions. In TWB's December 2004 production of The Nutcracker, for example, one of the apprentices danced the principal role of the Sugarplum Fairy. Apprentices work the same season as the Company. They sign employment contracts which are substantially identical to the contracts signed by the dancers; the only difference is in the rate of pay and the designation as "Apprentice Employment Agreement" rather than "Artist Employment Agreement." The testimony at hearing revealed three principal differences between apprentices and dancers. First, apprentices are paid less than dancers; approximately 50% of the minimum dancer salary. Second, they are identified as apprentices in TWB's performance programs by means of an asterisk next to their names. Finally, apprentices may be asked to participate in occasional performances with TWB's Studio Company – its training company – in addition to their work with the main Company.

Rehearsal Assistants

From time to time, the Artistic Staff utilizes dancers as rehearsal assistants. Rehearsal assistants are dancers in the Company who have significant experience with the pieces that are being prepared for performance, and also who have a talent for teaching the steps. They lead rehearsals, usually in one hour blocks, as needed. Rehearsal assistants do not lead the entire Company in rehearsal. They act as assistants when the group breaks up into several sections to practice a particular portion of a piece, leading a section while members of the Artistic Staff or guest choreographers lead other sections. In leading rehearsals, the rehearsal assistants perform a number of tasks. They teach the other dancers the choreography for a piece, either by performing the steps themselves or by showing a video. They help the other dancers refine the steps, troubleshooting and making sure the steps are properly executed. They also make sure the dancers are in straight lines and proper formation. Finally, after leading a rehearsal they may talk to the Artistic Staff about how the rehearsal has gone. No evidence was presented to suggest that these discussions have any impact on casting, wage rates, discipline or any other personnel action with regard to any of the dancers.

The rehearsal assistants are notified that they will be leading a rehearsal either verbally, by a member of the Artistic Staff, or by looking at the daily schedule. They are paid an extra hourly wage when they lead a rehearsal, in addition to their weekly salary as dancers. The rehearsal assistants dance in the productions for which they act as rehearsal assistants. Currently, two dancers are specifically designated as rehearsal assistants: Erin Mahoney and Jason Hartley. Mahoney acts as a rehearsal assistant a

maximum of 10% of the time; Hartley so acts for less time than Mahoney. The rest of the time, they are dancers. Their responsibilities as dancers are more important than their responsibilities as rehearsal assistants, and the Artistic Staff schedules their rehearsal assistant hours around the hours in which they need to rehearse as dancers themselves. They do not sign different contracts than the rest of the dancers, nor are they identified as rehearsal assistants in TWB's performance programs. They do not choreograph any pieces. They do not lead rehearsals of an entire ballet; rather, they run through discrete sections of a piece. They play no role in hiring, firing, casting, disciplining, or determining wages for any TWB employee. They follow the same sign-in procedure as the rest of the dancers and apprentices, and they follow the same schedule.

While Hartley and Mahoney are the currently-designated rehearsal assistants, the Artistic Director calls on several other dancers to lead rehearsals from time to time. At hearing, Artistic Director Webre testified "yesterday it happened [that another dancer led a rehearsal], and tomorrow it will happen again that another dancer might take rehearsal and be compensated for it. And I think it's in the spirit of, you know, everyone working with each other." Like Mahoney and Hartley, these dancers receive extra pay for the hours in which they serve as rehearsal assistants. When other dancers run rehearsals, they perform exactly the same functions as Mahoney and Hartley do in their capacity as rehearsal assistants. The Artistic Director may replace Hartley and/or Mahoney with other designated rehearsal assistants at any time. He may decide to have many designated rehearsal assistants, or he may choose to have none.

Analysis: Temporary/Seasonal Employee Issue

As noted earlier, the Employer's position regarding this issue is not entirely clear. TWB clearly argues that the election should be postponed until after April 1, 2005 due to the seasonal nature of the Employer's business. However, TWB also seems to suggest that the dancers and apprentices are generally ineligible to vote because they are irregular seasonal employees or temporary employees with a defined termination date. The temporary/seasonal issue is the threshold issue: if the dancers and apprentices were to be determined ineligible due to the very nature of their employment then the question of when to hold the election would be moot. Therefore, the temporary/seasonal issue will be addressed first.

The test for determining the eligibility of individuals designated as temporary employees is whether they have an uncertain tenure. Thus, if the tenure of the disputed individuals is indefinite and they are otherwise eligible, they are permitted to vote. MJM Studios, 336 NLRB 1255 (2001). Likewise, seasonal employees who have a reasonable expectation of reemployment in the foreseeable future are included in the bargaining unit. L&B Cooling, 267 NLRB 1 (1983).

The Employer suggests, although it does not directly argue, that the employees in the petitioned-for unit are ineligible seasonal and/or temporary employees and therefore do not comprise an appropriate bargaining unit. These contentions lack merit. First, the dancers and apprentices are not ineligible temporary employees because their tenure is

uncertain. While their annual employment contracts have an ending date, this does not mean that their employment with TWB ends on that date; to the contrary, the substantial majority of dancers sign new contracts for the following year before the 'end date' arrives. Indeed, the evidence reflects that the bulk of the dancers stay with the Company multiple years, signing a new contract every year. Thus, the dancers and apprentices are not ineligible temporary employees and may choose whether to be represented by a labor organization. See, e.g., WDAF Fox 4, 328 NLRB 3 (1999), enfd. 232 F.3d 943 (8th Cir. 2000)(an employee with a "date certain" for termination was not excluded as a temporary employee where the Employer demonstrated its termination dates were not immutable).

Similarly, the Employer's intimation that the unit is inappropriate because the employees are seasonal is incorrect as a matter of law. As noted above, seasonal employees who have a reasonable expectation of reemployment in the foreseeable future are included in the bargaining unit. Here, the record revealed that *at least* 75% of the dancers have been members of the Company for two or more seasons, and at least 45% have been members for five years or longer. Additionally, the Artistic Director testified that he does not hire apprentices unless he feels there is a "great likelihood" that they will be elevated into the Company. "In true seasonal cases, the Board has included [as eligible voters] seasonals whose return rate is in the 30% range." Saltwater, Inc., 324 NLRB 343 (1997)(finding eligible seasonal employees where 'up to 60%' return to work for the employer); Kelly Bros. Nurseries, 140 NLRB 82, 85 (1962). For the foregoing reasons, I find that the dancers and apprentices have a reasonable expectation of reemployment and are eligible to vote.

The Employer next argues that the election should be scheduled after April 1, 2005, when the dancers will know whether they will remain with TWB for the 2005-2006 season, and new dancers, if any, will have been hired. In its brief, TWB argues to hold the election earlier means that "the Dancers remaining with TWB for the 2005-2006 season will be greatly prejudiced by having Dancers who no longer have a continued interest in the terms and conditions of employment vote…similarly, Dancers who will be employed next season will be prejudiced if they are excluded from voting." This argument is unsupported by Board law.

When an employer's operations are seasonal, the voting franchise may be made available to the largest number of eligible voters by holding the election at or near the seasonal peak. Kelly Bros. Nurseries, 140 NLRB 82 (1962) In these circumstances, the Agency tries to balance the twin goals of holding a prompt election while also enfranchising the greatest number of eligible employees. The Board may delay an election in a situation when an Employer's work force is substantially greater at a seasonal peak than in the off season. Dick Kelchner Evacuating Co., 236 NLRB 1414 (1978); see also Tusculum College, 199 NLRB 28 (1972)(delaying an election at a college until fall classes began, where many unit employees were not on campus during the summer). However, it will not postpone an election where there is no single 'peak' portion of the season and a delay would hamper employees in their enjoyment of their rights under the Act. See, e.g., Sitka Sound Seafoods, Inc. v. N.L.R.B., 206 F.3d 1175, 1181 (D.C.Cir. 2000).

In this case, the number of employees will remain the same regardless of when, during the nine month season, the election will be held; the number of dancers in the Company is always about 20. Thus the policy reasons supporting postponement of an election do not exist here. The Employer's argument that the election should be postponed because one or two of the dancers may be different next season is meritless.

"There is no assurance under any method of determining eligibility that the employees found eligible to vote will continue to work for the Employer for any significant period of time. That eligible workers who may not have a continuing interest in working for the Employer may vote to determine the representation rights of future employees does not require [postponing the election]." Saltwater, Inc. 324 NLRB 343, 344 (1997).[4]

For the foregoing reasons, I find that the dancers and apprentices are eligible voters, and that the election should proceed without delay. [5]

Analysis: Supervisory Issue

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

> The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are

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[4] In addition, I note that to delay the election as the Employer requests would result in the election not being conducted until at least mid-August, 2005, when any new dancers would actually begin work. cf. Roy N. Lotspeich Publishing Co., 204 NLRB 517 (1973)(to be eligible to vote, an employee must be employed and working on the established eligibility date). Inasmuch as the filing of the petition and conduct of the hearing herein occurred in the middle of the Employer's "season" – as would the election I direct herein – I found such a delay would be unwarranted and inappropriate.

[5] At the hearing, the Hearing Office asked the parties whether a special eligibility formula should be applied in this case. Neither party asserted that a formula was applicable.

mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Kentucky River Community Care, Inc., 121 S.Ct. 1861, 1867 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. New Fern Restorium Co., 175 NLRB 871 (1969).

I find the Employer has not met its burden of establishing that the rehearsal assistants are supervisors. While they earn more money than the other dancers during the hours in which they lead rehearsals, they sign the same employment contract, work on the same schedule, follow the same sign-in procedure, and are subject to the same policies and procedures as the other dancers. No testimony whatsoever was presented to show that the rehearsal assistants have authority to directly perform *or* effectively recommend any of the supervisory functions set out in Section 2(11) of the Act with the exception of one category: assignment/direction of work. While some evidence was adduced on this point, it is not enough to support a finding of supervisory status under the Act.

The record reveals that in addition to performing the same tasks as the other dancers, which they do at least 90% of the time, the rehearsal assistants train the dancers to perform steps in a particular sequence and offer guidance in refining the steps, making sure they are performed properly in accordance with the choreography. They do not teach the steps themselves; they merely assist the dancers in rehearsing the order in which they have been set by the choreographer. Rehearsal assistants do not determine when or how often to rehearse a particular piece or sequence of steps, cast dancers in any roles, or choreograph any of the steps they rehearse, and they do not have the authority to reprimand or discipline dancers for failure to obey their guidance. The record is therefore devoid of evidence that they assign or direct any substantive work, either directly or indirectly, or that they use independent judgment in providing training or guidance. Indeed, one of the rehearsal assistants himself, who was called as the Employer's witness at Hearing, testified that in acting as a rehearsal assistant "I'm nothing more than a parrot and I just do as I'm told from my teachers…" With regard to training, it is well established that merely providing training to employees, without more, is insufficient to establish supervisory status. Sears, Roebuck & Co., 292 NLRB 753, 754 (1989). Regarding the rehearsal assistants' guidance to dancers, the Board has clearly held that providing such guidance, when it is constrained within employer specified standards [in this case, the steps as choreographed, and the dancers performing the roles as cast] and is unaccompanied by the power to make significant judgments such as determining whether additional rehearsal is necessary or issuing reprimands, is merely "routine", does not require the use of independent judgment, and does not establish supervisory status. Dynamic Science, Inc., 334 NLRB 391 (2001), see also Musical Theatre Association, 221 NLRB 872, 873(1975)("artistic direction and instruction of performers by a director

or choreographer is in the nature of professional direction and is not to be equated with the exercise of supervisory authority in the Employers' interest.")

The Employer's reliance on Rose Metal Products, Inc., 289 NLRB 1153 (1988), is misplaced. In that case, the Board found a foreman to be a statutory supervisor where he: (1) assigned tasks to employees based on his assessment of their skill level and the availability of the employees to work on the tasks; (2) transferred work from one employee to another; (3) instructed employees to correct flaws in their work; and (4) made effective recommendations on firing employees. The facts here are easily distinguishable. Unlike the Rose Metal foreman, the rehearsal assistants do not assign tasks, transfer work or make effective recommendations. They rehearse sections of a ballet with dancers who have already been cast – with no input from the rehearsal assistants -- in various roles. The rehearsal assistants are told which sections of the ballet they are to rehearse, and are told which dancers they will be working with. While they help dancers to correct flaws in their work, this type of routine guidance does not confer supervisory status, as discussed above. Finally, the record contains no evidence that the rehearsal assistants make effective recommendations as to casting, hiring, firing, promotions, discipline, or any other personnel action.[6]

Based on the foregoing, I find that the Employer, as the party asserting supervisory status, has not met its burden in proving that the rehearsal assistants have the authority to hire, fire, discipline, evaluate, assign or responsibly direct other employees, or carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. Kentucky River Community Care, 121 S.Ct at 1867. Therefore, I find that the rehearsal assistants are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I will include the dancers who serve as rehearsal assistants in the unit.

Analysis: Community of Interest Issue

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof…." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." Overnite Transportation Co., 322 NLRB 723 (1996); Parsons Investment Co., 152 NLRB 192, fn. 1; Morand Bros. Beverage Co., 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951).

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[6] The other case cited by TWB is similarly inapposite. Cascade General, 303 NLRB 656 (1991), enfd., 9 F.3d 731 (9th Cir. 1993), cert. denied 511 U.S. 1052 (1994)(finding supervisory status where employees, *inter alia*, effectively recommended hiring and firing, supplied job material, scheduled employees, established work procedures in order to meet scheduling deadlines, assigned and adjusted tasks throughout ship repair jobs, handled paycheck problems, issued temporary layoffs and assigned overtime.)

It is well-settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. General Instrument Corp. v. NLRB, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); Mountain Telephone Co. v. NLRB, 310 F. 2d 478, 480 (10th Cir. 1962). The petitioning union's choice of a unit is always a relevant consideration, but the union's choice cannot be dispositive. Marks Oxygen Co., 147 NLRB 228, 130 (1964). Community of duties and interests of the employees involved is the major determinant. Swift Co., 129 NLRB 1391 (1960). If there is a sufficient community of interest among employees, the fact that groups of employees have different duties and responsibilities does not make a combination of those employees inappropriate. Berea Publishing Co., 140 NLRB 516, 518 (1963). Relevant considerations include: **(a)** the degree of functional integration among the employee classifications; **(b)** common supervision; **(c)** nature of employee skills and functions; **(d)** interchange and contact among employees; **(e)** work sites; **(f)** general working conditions; and **(g)** fringe benefits. The Board applies these traditional community of interest criteria in unit determinations within the entertainment industry. Musical Theatre Ass'n, 221 NLRB 872 (1975); Wilding Picture Productions, Inc., 104 NLRB 831 (1953).

Applying the factors above to the facts developed on the record in this case, I find that the petitioned for unit, including the apprentices, is an appropriate unit for bargaining. As described in more detail above, the apprentices and dancers are completely integrated. They use the same procedure for signing in, and they are in the same classes and rehearsals all day. They dance in the same productions, and they are all eligible for same roles. They are supervised by the same Artistic Staff; apprentices receive no additional supervision or mentoring. They have the same skills and functions, dancing any and all roles in the Company's productions. While the apprentices also occasionally dance with TWB's Studio Company, the record reveals that they spend the vast majority of their time training and dancing with the main Company. In this regard the apprentices are no different than some of the dancers, who are also asked to perform at small additional engagements, appearing at the National Gallery or other venues on occasion. The apprentices and dancers train and perform together at least 30 hours per week at the same site, thus there is constant contact among the employees at the same physical facility. Their general working conditions are identical: they attend the same classes and rehearsals the same number of hours per week, and perform in the same productions. Finally, the apprentices have the same benefits as the dancers. Their sick leave, health care, retirement plan, and other benefits are indistinguishable. As noted earlier, the dancers and apprentices sign identical employment agreements but for two differences: the wage rates for apprentices are lower, and the contracts are titled Apprentice Employment Agreement rather than Artist Employment Agreement.

The differences between apprentices and dancers do not affect the determination that they share a community of interest. The record reflects that they are apprentices in name only. The only facts that identify them as apprentices are the title on their employment contract, the designation in the program and their lower rate of pay. However, even if the apprentices were more like traditional apprentices and not yet

capable of performing at the same level of competence as other employees, it is well established that apprentices have a community of interest and are included in a bargaining unit with other employees. Barron Heating & Air Conditioning, Inc., 343 NLRB No. 58 (2004), UTD Corporation, 165 NLRB 346 (1967), General Motors Corp., 131 NLRB 100, 105 (1961).

Based on the foregoing, I find that the petitioned-for unit, including dancers and apprentices, is an appropriate unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Petitioner, American Guild Of Musical Artists, AFL-CIO, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated that The Washington Ballet, a District of Columbia corporation, is engaged in the presentation of performances and the training of ballet dancers through the Washington School of Ballet at its Washington, DC facility. Annually, the Employer derived gross revenues, excluding contributions which, because of limitation by the grantor, are not available for operating expenses, in excess of $1 million and purchased and received at its Washington, DC facility products, goods and materials valued in excess of $5,000 directly from points outside of Washington, DC.

6. There is no relevant history of collective bargaining for any of the Employer's employees.

7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time dancers, including rehearsal assistants and apprentices, employed by the

Employer at its Washington, D.C. facility, excluding stage managers, production stage managers, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **AMERICAN GUILD OF MUSICAL ARTISTS, AFL-CIO**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **JANUARY 26, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **February 2, 2005**. The request may not be filed by facsimile.

(SEAL)

WAYNE R. GOLD

Dated: JANUARY 19, 2005

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5